

COUNTY COUNCIL
OF
HARFORD COUNTY, MARYLAND

Bill No. 10-16

Introduced by: Council President Boniface and Council President Boniface at the request
of the County Executive and Council Member Shrodes

Legislative Day No. 10-14 Date: May 18, 2010

AN ACT to add the definitions of cooperative purchasing and equipment to Section 41-3, Definitions, of Article I, General Provisions; to repeal and reenact, with amendments, Subsections B(4) and C, of Section 41-7, Director, of Article II, Department of Procurement; to repeal Section 41-10, Joint purchasing, of Article II, Department of Procurement; to repeal and reenact, with amendments, Section 41-14, Competitive bidding, of Article II, Department of Procurement; to repeal and reenact, with amendments, Section 41-20, Local contractors, of Article III, Purchase Orders and Contracts; to repeal and reenact, with amendments, Section 41-23, Liquidated damages, of Article III, Purchase Orders and Contracts; to repeal and reenact, with amendments, Section 41-25, Powers and duties of Board of Estimates, of Article III, Purchase Orders and Contracts; to repeal and reenact, with amendments, Subsections A and G of Section 41-26, Formal contract procedure, of Article III, Purchase Orders and Contracts; and to repeal and reenact, with amendments, Subsections A and C of Section 41-27, Open market procedure, of Article III, Purchase Orders and Contracts; all of Chapter 41, Procurement, of the Harford County Code, as amended; to add the definitions of cooperative purchasing and equipment; to require a certain bond amount for the Director of Procurement, to provide that certain contracts be competitively bid, to require certain contracts to have a liquidated damages provision; to require certain contracts to be awarded by the Board of Estimates; to provide that certain supplies and services be purchased by formal contract procedure; to require certain contracts be made under an open market procedure; and generally relating to procurement.

By the Council, May 18, 2010

Introduced, read first time, ordered posted and public hearing scheduled

on: June 15, 2010

at: 6:00 pm

By order: _____, Council Administrator

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on June 15, 2010, and concluded on June 15, 2010.

Barbara J. O'Connor/mkf, Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [BRACKETS] indicate matter Deleted from existing law. Underlining indicates Language added to bill by amendment. Language Lined through indicates matter stricken out of Bill By amendment.

1 WHEREAS, To ensure the fair and equitable treatment for all persons utilizing the
2 County's procurement system; and

3 WHEREAS, To foster effective broad-based competition within the free enterprise
4 system; and

5 WHEREAS, To encourage local vendors to participate in the County's procurement
6 system; and

7 WHEREAS, To provide for public confidence in the procurement process.

8 NOW, THEREFORE,

9 Section 1. Be It Enacted By the County Council of Harford County, Maryland, that the
10 definitions of cooperative purchasing and equipment, be, and they are hereby, added to Section
11 41-3, Definitions, of Article I, General Provisions; that Subsections B(4) and C, of Section 41-7,
12 Director, of Article II, Department of Procurement, be, and they are hereby, repealed and
13 reenacted, with amendments; that Section 41-10, Joint purchasing, of Article II, Department of
14 Procurement, is hereby repealed; that Section 41-14, Competitive bidding, of Article II,
15 Department of Procurement, be, and it is hereby, repealed and reenacted, with amendments; that
16 Section 41-20, Local contractors, of Article III, Purchase Orders and Contracts, be, and it is
17 hereby, repealed and reenacted, with amendments; that Section 41-23, Liquidated damages, of
18 Article III, Purchase Orders and Contracts, be, and it is hereby, repealed and reenacted, with
19 amendments; that Section 41-25, Powers and duties of Board of Estimates, of Article III,
20 Purchase Orders and Contracts, be, and it is hereby, repealed and reenacted, with amendments;
21 that Subsections A and G, of Section 41-26, Formal contract procedure, of Article III, Purchase
22 Orders and Contracts, be, and they are hereby, repealed and reenacted, with amendments; and
23 that Subsections A and C, of Section 41-27, Open market procedure, of Article III, Purchase

Orders and Contracts, be, and they are hereby, repealed and reenacted, with amendments, all of Chapter 41, Procurement, of the Harford County Code, as amended, all to read as follows:

Chapter 41. Procurement.

Article I. General Provisions.

Section 41-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

COOPERATIVE PURCHASING - PROCUREMENT CONDUCTED BY, OR ON BEHALF OF TWO OR MORE UNITS OF GOVERNMENT.

EQUIPMENT - PERSONAL PROPERTY OF A DURABLE NATURE THAT RETAINS ITS IDENTITY THROUGHOUT ITS USEFUL LIFE, BUT DOES NOT INCLUDE COMMODITIES, MOTOR VEHICLES OR INFORMATION TECHNOLOGY EQUIPMENT (HARDWARE OR SOFTWARE).

Article II. Department of Procurement.

§ 41-7. Director.

B. Duties generally. The Director shall be responsible for:

(4) Giving an official bond, to be approved by the Department of Law, in the sum of [one hundred thousand dollars (\$100,000)] \$500,000. The bond shall be paid for by the county.

C. Scope of purchasing authority. The Director shall have the power and it shall be [his] THE DIRECTOR'S duty to provide for the purchasing or contracting for all supplies and contractual services, including capital projects and consultant services, needed by any using agency of the county, in accordance with purchasing procedures as prescribed by this chapter and such rules and regulations as the Director shall adopt for the internal

1 management and operation of the Department of Procurement and such other rules and
2 regulations as shall be prescribed by the County Executive. WHENEVER POSSIBLE,
3 THE DIRECTOR SHALL UTILIZE THE FORMAL CONTRACT PROCEDURES
4 PROVIDED FOR HEREIN TO ALLOW GREATER OPPORTUNITIES FOR LOCAL
5 CONTRACTORS TO BID ON AND RECEIVE CONTRACTS UNDER THIS
6 CHAPTER.

7 (1) Exceptions. The Director shall not be responsible for providing for the
8 purchasing of books, periodicals, organizational memberships, educational
9 services and seminars and, except as otherwise provided for herein, physicians'
10 services, special legal counsel and other professional services customarily
11 negotiated.

12 (2) Unauthorized purchases. Except as herein provided, it shall be unlawful for any
13 county employee or officer to order the purchase of any supplies or make any
14 contract within the purview of this chapter other than through the procedures
15 provided for in this chapter, and any purchase ordered or contract made contrary
16 to the provisions hereof shall not be approved by the county, and the county shall
17 not be bound thereby.

18 **§ 41-10. (RESERVED) [Joint purchasing.**

19 When considered in the interests of the county, the Director of Procurement, with the approval of
20 the County Executive, may undertake programs involving joint or cooperative purchase with
21 other public jurisdictions within or without the state.]

22 **§ 41-14. Competitive bidding.**

23 Except as otherwise provided herein, all purchases of and contracts for supplies and contractual
24 services [and all sales of personal property which has become obsolete and unusable], in an

1 amount of [\$10,000] \$25,000 or more, shall be based on competitive bids. Trade-in of
2 equipment and supplies may be a part of a purchase.

3 **Article III. Purchase Orders and Contracts.**

4 **§ 41-20. Local contractors.**

5 Except where prohibited by state or federal laws or rules or regulations, [the purchasing of
6 supplies, equipment, capital improvement projects and architectural engineering consultant
7 services from vendors and contractors] PURCHASING FROM VENDORS, CONTRACTORS
8 AND CONSULTANTS OR PROFESSIONAL SERVICES whose place of business is
9 physically located in the county is considered to be in the best interest of the county, and such
10 purchases shall be made from local vendors, [and] contractors AND CONSULTANTS, provided
11 that price, quality and service are equal to that which can be obtained from vendors whose place
12 of business is located outside of the county.

13 **§ 41-23. Liquidated damages.**

14 Liquidated damages provisions may be used in contracts under such circumstances that time of
15 delivery or performance is such an important factor that the county may reasonably expect to
16 suffer damages if the delivery or performance is delinquent and when the extent or amount of
17 such damages would be difficult or impossible to ascertain or prove. When a liquidated damages
18 clause is used, the contract shall set forth the amount which is to be assessed against the
19 contractor for each day of delay. The rate of assessment of liquidated damages must be
20 considered on a case-by-case basis and reasonably fixed with reference to probable actual
21 damages. Determination to use liquidated damages provisions in a contract and determination as
22 to rate of assessment of liquidated damages shall be made by the County Attorney after
23 consultation with the using agency. Liquidated damages provisions shall be included in all

contracts of [twenty-five thousand dollars (\$25,000.) or more for capital improvement projects]
\$100,000 OR MORE.

§ 41-25. Powers and duties of Board of Estimates.

EXCEPT FOR EMERGENCY PURCHASES, THE [The] Board of Estimates shall have the responsibility for [the] awarding [of] all contracts [awarded under the procedures of §41-26] that are in an amount of [twenty-five thousand dollars (\$25,000) or more,] \$50,000 OR MORE, shall award all contracts that are awarded under §41-28 that are in an amount of [two thousand five hundred dollars (\$2,500) or more] \$25,000 OR MORE and shall approve all purchases, sales or leases of real property. All other contracts shall be awarded by the County Executive or the Director when such authority is delegated to [him] THE DIRECTOR by the County Executive in writing AND SHALL BE POSTED ON THE COUNTY'S WEBSITE.

§ 41-26. Formal contract procedure.

A. Generally. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed [\$10,000] \$25,000, shall be purchased by formal, written contract from the lowest responsible bidder after due notice inviting bids. [All sales of personal property which has become obsolete and unusable, when the estimated value shall exceed \$10,000, shall be by formal, written contract to the highest responsible bidder after due notice inviting bids.]

G. Capital improvement projects.

(2) Prequalification of contractors for capital improvement projects.

(a) The Director shall establish by regulation a prequalification procedure for the procurement of capital improvement projects that exceed [\$50,000] \$100,000.

§ 41-27. Open market procedure.

1 A. Generally. Except [a] AS provided in § 41-20.1 of this chapter, all purchases [of
2 supplies, contractual services and all sales of personal property which has become
3 obsolete and unusable,] of less than the estimated value of [\$10,000] \$25,000, shall be
4 made in the open market, without [newspaper] advertisement and without observing the
5 procedure prescribed in § 41-26 for the award of formal contracts and in § 41-28 for the
6 award of contracts for consultant and other professional services.

7 C. Notice inviting bids. The Director shall solicit price quotations by direct mail request to
8 prospective vendors and/or by telephone. For those procurements of [\$5,000 to \$10,000]
9 UNDER \$25,000, price quotations shall be documented by means such as, but not
10 limited to, electronic or facsimile transmissions from the vendors which will be retained
11 in the file. The solicitation of price quotations should be from as many suppliers as are
12 required to obtain a reasonably complete sampling of the market. The list of potential
13 suppliers should be rotated, always including the current source, so that over a period of
14 time each will be contacted. The solicitation should cover a spread of multiple quantities
15 sufficient to indicate the price breaks or discounts for quantity purchases and possible
16 transportation economics.

17 Section 2. And Be It Further Enacted, that this Act shall take effect 60 calendar days from
18 the date it becomes law.

EFFECTIVE: August 16, 2010

*The Council Administrator does hereby certify that
fifteen (15) copies of this Bill are immediately available for
distribution to the public and the press.*

Barbara J. O'Connor
Council Administrator

HARFORD COUNTY BILL NO. 10-16

Brief Title Procurement Code

is herewith submitted to the County Council of Harford County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

Barbara J. O'Connor
Council Administrator

Date June 15, 2010

ENROLLED

Billy Bonifoe
Council President

Date June 15, 2010

BY THE COUNCIL

Read the third time.

Passed: LSD 10-16

Failed of Passage: _____

By Order

Barbara J. O'Connor
Council Administrator

Sealed with the County Seal and presented to the County Executive for approval this 16th day of June, 2010 at 3:00 p.m.

Barbara J. O'Connor
Council Administrator



BY THE EXECUTIVE

David R. Aug
COUNTY EXECUTIVE

APPROVED: Date June 17, 2010

BY THE COUNCIL

This Bill No. 10-16 having been approved by the Executive and returned to the Council, becomes law on June 17, 2010

EFFECTIVE DATE: August 16, 2010

Barbara J. O'Connor /MKM
Barbara J. O'Connor
Council Administrator